

of little use to those who cannot read the materials, nor is there any indication that they will be made available in anything other than a very limited number of languages. Public service announcements, the other major vehicle Treasury plans to employ, are unlikely to provide much in the way of substantive information. It is certainly unrealistic for Treasury to count on already over-extended and under-funded community based organizations to take on the role of educating and training those among the 10 million unbanked recipients of direct federal benefits who are out there who will need such assistance because of their educational or language problems.

It is not enough to note, as Treasury does in the preamble to the proposed regulations, that in some areas ATMs and POS terminals offer language options other than English⁴³ as this does nothing to answer the question of whether on-screen messages in the appropriate language are in fact available to those who need them where and when they need them. The obvious answer to this question is no if your primary language is something other than Spanish or English.

Moreover, Congress specifically instructed Treasury to address the problems that recipients with these handicaps have in transitioning to an electronic system. Simply saying that the problems are not problems, is not addressing them, it is ignoring them. There will be, as Congress recognized, significant difficulties faced by recipients with mental problems, and literacy and English fluency barriers in this changed environment. There is simply no justification for excluding these populations from the ability to seek a hardship waiver.

B. No Waivers Are Available to Those with Bank Accounts Who Become Eligible for Federal Benefits after July 26, 1996.

No waivers are available whatsoever for recipients who become eligible for federal payments after July 26, 1996 who have bank accounts. Treasury's justification for this is slim:

Treasury's proposal to tie the availability of a waiver for an individual who has a bank account to the date an individual became eligible for the federal payment is based on a review of its experience, and the experience of the agencies responsible for the vast majority of Federal payments, during phase one The SSA . . . reports that approximately 76% of the recipients who became eligible to receive Social Security and

⁴³ *Id.*

Supplemental Security Income payments since July 26, 1996, are receiving payment by EFT.⁴⁴

There are several problems with this justification. One: We have heard reports from recipients, that they are being told when they go into SSA offices and apply for benefits that they must have a bank account.⁴⁵ So recipients are going out and obtaining new bank accounts -- whether or not they can afford them -- solely because they are led to believe that obtaining one is a prerequisite to qualifying for federal benefits. Recipients should not be misled in this way. Congress never intended that unbanked new recipients be pressured into obtaining bank accounts for the sole purpose of qualifying for federal payments, especially when there is no federal oversight of the costs for the accounts established just for receipt of federal benefits. The fact that as a result of this misinformation, many new recipients are signing up for EFT, and are obtaining bank accounts in the process, cannot be a reasonable basis for disallowing hardship waivers to this population.

The second problem is if only 76% of the recipients who become eligible are receiving payment by EFT, what about the rest? This means that 24% of new recipients are NOT signing up for EFT. How does Treasury propose to handle them? In its discussion of the hardship waiver, Congress made no distinction between individuals based *on when they become eligible for federal benefits*:

- (2)(A) The Secretary of the Treasury may waive application of this subsection to payments--
 - (i) for individuals or classes of individuals for whom compliance imposes a hardship;⁴⁶

New recipients need waivers based on physical, geographic, mental, English fluency, and literacy reasons as much as other recipients. There should not be any distinctions based on when eligibility for federal benefits occurred. Moreover, this proposed system of waivers makes no allowance for future changes in the circumstances of a recipient. For example, if a recipient moves from one area in which banks are accessible to another in which they are not, the recipient should be able to claim a geographic hardship. Or if a recipient becomes non-ambulatory and can no longer walk to the bank, the physical hardship waiver should always be available. Further, if banks merge, close branches, or fees and charges increase to an unaffordable amount, recipients need to be able to claim hardship waivers.

⁴⁴62 Fed. Reg. 179 at 48718, September 16, 1997.

⁴⁵ We have heard this about recipients in Massachusetts, Maryland, and California, to name just a few.

⁴⁶ 31 U.S.C. § 3332(f)(2)(A).

Finally, having different waiver criteria based on the date of eligibility for federal payments confuses and unnecessarily complicates the already difficult educational process. Also, as the years go by, this distinction becomes more arbitrary and unreasonable.

C. Financial Hardship Waivers Are Not Available to Recipients Who Have Accounts.

Treasury proposes to disallow any waiver based on financial hardship to those with bank accounts. This might not be so disastrous if Treasury were ensuring that the bank accounts which recipients are securing are: a) accessible through the financial institution, b) at a reasonable cost, and c) have consumer protections, as the law requires. Yet, Treasury is engaging in a massive public education effort designed to promote direct deposit for federal recipients, and many recipients are under the impression that obtaining a bank account is a prerequisite to qualifying for federal benefits.⁴⁷ Additionally, the fringe bankers themselves are launching an ambitious campaign to maintain and increase their business, by telling federal recipients that they must have electronic deposit.⁴⁸ Also, some recipients who seek accounts at banks are being denied them because of their credit history.⁴⁹ The result of all this is tremendous confusion by unbanked recipients about whether they need to go out and obtain their own accounts, and what will happen to their federal benefits if they do not.

The combination of these three factors -- the failure to tell recipients that may qualify for a waiver of the EFT requirement only if they *do not* have a bank account, and the complete failure to regulate the bank accounts that recipients obtain in order to receive benefits, combined with the heavy advertising campaign by the fringe bankers to establish electronic accounts through them -- is clearly in derogation of Congress' intent to protect low income recipients from expensive consequences of the EFT mandate. Congress explicitly said:

The Secretary of the Treasury is given broad discretion to waive the requirements of this section *to avoid imposing a hardship on a beneficiary*. (Emphasis added.).⁵⁰

⁴⁷We have heard this from advocates in several states.

⁴⁸ See Appendix C, ad from a Minneapolis check casher advertising electronic deposit with the delivery of a paper check. Total cost each month for a \$500 Social Security check - \$13.95.

⁴⁹ We have heard this problem from an advocate in Illinois. The client was told that in order the client's disabled child to receive SSI payments, the mother must establish a bank account. Because of the mother's credit problems, no bank would provide her an account.

⁵⁰ 142 Cong. Rec. H 4091.

Also, what about all the recipients who may have an affordable bank account now, for which the institution raises prices, or if the financial circumstances of the recipient changes, such that an account is no longer affordable? Surely recipients who find themselves unable to afford bank accounts should be able to qualify for this waiver based on financial hardship as well.

The absolute prohibition against waiver based on financial hardship for anyone who has a bank account is far too broad, and clearly outside the parameters of Congress' intention for Treasury to design a waiver system "to avoid imposing a hardship on a beneficiary." Waivers should be available to everyone based on financial hardship, regardless of whether they have an account at the time they became eligible for the federal payment, or when EFT went into effect.

IV. Issues on the Design of the ETA Must Be Addressed.

A. Under These Proposed Rules, the ETA Would Not Be Available to Recipients Who Have Established Other Accounts.

Treasury proposes that the ETA will *only* be provided to

"an individual [who] either certifies that he or she does not have an account with a financial institution, or [who] fails to provide information pursuant to Sec. 208.8"⁵¹

Inexplicably, Treasury proposes to *not* provide the only accounts regulated for reasonable costs and consumer protections to individuals who already have accounts. Thus, all of the following recipients are prohibited from participating in these regulated, limited fee, and protected accounts:

- 1) Those who were misled into believing that they had to have an account to qualify for or maintain their federal benefits;⁵²
- 2) those who were good citizens and responded to the insistent advertisements from the Social Security Administration that they had to obtain an account and signed up for a bad one through a check casher or even an account with a bank that does not work for them for some reason or another; or
- 3) those who may already have an account with a financial institution but find that it is too expensive or inconvenient.

⁵¹Proposed 31 C.F.R. 208.5.

⁵² Advocates from several states report that recipients are being misled in this way.

We are led to believe that the reason that Treasury will not provide the ETAs to those already with accounts is because Treasury does not want to compete with the private sector. Treasury cannot have it both ways. Treasury should not be in the business of providing accounts if it does not want to compete for those accounts. Congress expressly required Treasury to ensure that recipients do not suffer as a result of the EFT 99. Treasury seems most concerned that the private sector not suffer as the result of EFT 99. If Treasury is concerned about competing with financial institutions for business then the simple solution is for Treasury *not* to offer an ETA. Rather, Treasury should establish a baseline of minimum consumer protections that would apply to all accounts established to access federal money, *as Congress mandated*.

Further, it is entirely unreasonable to assume, as Treasury does, that recipients of federal benefits, who rely on their monthly checks for subsistence will close existing bank accounts to become eligible for the ETA. To qualify for an ETA, a recipient would be required to close an existing account, obtain and send in the Treasury waiver form, then be assigned an ETA, all within one month. This would be necessary to ensure the federal benefit payments arrive in a timely manner. The process is complicated and unwieldy. How many *sophisticated consumers* would trust the combined bureaucracies of the federal government and two financial institutions to make a transfer of an essential payment from one institution to another on timely basis? Imagine the consternation of a fairly unsophisticated recipient who is facing this prospect as the only way to obtain the ETA.

B. The Law as Well as Policy Considerations Dictate That Full "Reg E" Protections Apply to the ETAs.

Presumably Treasury will establish that ETAs will be considered government benefit accounts under 12 C.F.R. § 205.15. As such, they will be exempt from certain requirements of Reg E. If they are exempt, the cost to financial institutions for establishing the ETAs will be lower. However, this is not what Congress envisioned.

Treasury is setting up the ETA structure pursuant to the Congressional mandate to provide regulations which ensure access at reasonable cost with "the same consumer protections with respect to the account as other account holders at the same financial institution" as is required by 31 U.S.C. § 3332(i)(2). All Reg E protections apply to all other account holders, and by virtue of § 3332(i)(2), should apply to the ETA accounts as well. This means that the various exemptions for accounts "established by a government agency for distributing benefits to a consumer electronically" -- as permitted by 12 C.F.R. 205.15 (Reg E) -- should *not* be applicable to the ETAs. If these exemptions were to be applicable, such that ETA recipients were not entitled to the same initial disclosures, and the same periodic statements as all other accounts holders, what would be the meaning of the language in 31 U.S.C. § 3332(i)(2)?

On the other hand, if ETAs are provided by Treasury pursuant to authority that it had prior to the passage of 31 U.S.C. § 3332(i)(2), then the exemptions allowed government benefit accounts in Reg E would be permissible. It is clear that Congress was under the impression that Treasury already had the authority to establish a federal Electronic Benefit Transfer system:

Congress expects the Secretary of the Treasury to work vigorously to accommodate the needs of the unbanked recipients through such means as (1) the planned implementation of a national electronic benefits transfer system for federal payments . . . under Treasury's *existing authority*. (emphasis added.)⁵³

Congress contemplated that the *new* accounts, to be established by recipients to comply with EFT 99 requirements, are to be owned by the recipients. As the statement in the Congressional Record goes on:

(2) implement through the private sector *consumer owned bank accounts* where recipients access their funds by debit card or other means, rather than through traditional account features, such as checking.⁵⁴

Any accounts which are owned by the recipients do not qualify for the exemption in Reg E, as the exemption only applies to accounts which are "established by a government agency."⁵⁵

The solution to this confusion is simple: ETAs can be provided by Treasury as a default account, if it chooses to go that route, but it does so pursuant to the authority it has exclusive of the mandates of EFT 99. As such, the ETAs would qualify for the exemption in Reg E. In that case, the mandates of 31 U.S.C. § 3332(i) -- requiring that Treasury regulate accounts established by recipients to comply with the requirements of EFT 99, for access at reasonable cost, with all consumer protections applicable to other account holders -- would apply to all the voluntary accounts established by recipients.

C. Answers to Treasury's questions regarding appropriate features of the ETA.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ 12 C.F.R. § 205.15(a)(2).

Question: *Should Treasury make available a debit card-based account to individuals who are required to receive Federal payments by EFT and who do not have an account of their own with a financial institution?*

Response: Yes, but this should not be the only type of account option offered to recipients. Treasury's own commissioned study, *Mandatory EFT Demographic Study*, showed that this type of account is particularly unappealing to those who are unbanked.⁵⁶ Moreover, in many rural areas the local community banks completely lack ATMs. Debit card only accounts would be useless to recipients in such areas, as they would be unable to readily access their funds. Accordingly, the ETA should encompass a menu of account options from which recipients can select the account type that best meets their needs, including the option to opt out of any of the alternatives based on one of the hardship waivers (which should be expanded to include criteria as discussed above).

Question: *Should the cost of the account to the recipient be the most important factor for selecting the account structure and/or the account providers, or should the account structure be designed to meet other objectives even if the cost to recipients is increased as a result? If the latter, which objectives? What is an appropriate standard by which to weigh tradeoffs between increased cost and additional account features?*

Response: Yes, the cost of the account to the recipient should be the most important factor. Cost would be less critical if Treasury were willing to permit the majority of the currently unbanked to claim a waiver from ETA on the basis of financial hardship, as most of these individuals are now able to have checks cashed at little or no cost.⁵⁷

One of the major reason some recipients have avoided establishing bank accounts is because they cannot afford the fees and have found alternative means for cashing their

⁵⁶ 52% of the unbanked recipients in the mail survey said that they would be not at all or not too likely to elect a debit card based account. In the telephone survey the opposition was even stronger with two-thirds of the unbanked indicating that they were not at all or not too likely to want such an account.

⁵⁷ The *Mandatory EFT Demographic Study* found that for respondents to the mail survey two-thirds of the unbanked recipients use banks, credit unions or grocery stores to cash their federal checks, 12% get friends or relatives to cash the checks for them, and only 12% pay check cashing outlets to cash their checks; corresponding figures from the telephone survey found 81% of respondents using primarily banks and grocery stores and 8% using check cashing outlets (the telephone survey did not include a comparable question about the use of friends and relatives for check cashing purposes). Thus, the survey results fully support the fact that most unbanked recipients of federal benefits are able to find a way to have their federal checks cashed for free.

benefit checks.⁵⁸ For low income recipients living on fixed incomes any new expense is in fact a financial hardship. Accordingly, we would urge that Treasury waive all fees for a basic ETA for all unbanked recipients of needs based federal benefits and that some sort of sliding fee scale be established for all other recipients based on their actual monthly income.

By offering a menu of services, decisions about cost can be made by the individual recipients. Encouraging saving should be included among the goals to be met by the ETA.

***Question:** Should the account be structured to provide only a basic withdrawal service at the lowest possible cost, with additional service charges for additional features, or should the account offer a range of services at a fixed monthly cost, even if greater than the cost of a basic account?*

Response: For the very reasons noted above, we believe the former approach is preferable. Many recipients will want nothing more than basic withdrawal services and should not be required to pay routine monthly fees for services they never or rarely use. Those who want additional services can shop around for them and then decide whether to obtain them on their own or elect to have them provided as part of their ETA at an additional cost.

***Question:** How many withdrawals should be included in the base price of the account? Should the account terms address the charges imposed by automated teller machine owners other than the account provider?*

Response: No fewer than four ATM withdrawals should be included in the base price of the account plus a reasonable number of ATM balance inquiries, as well as an unlimited number of POS transactions including withdrawals. In the absence of ATM availability, the same general rules should apply to teller withdrawals. Recipients who use the ATMs of the financial agent with whom the account has been established or any of its subcontractors, on a more frequent basis than for four withdrawals a month, should be charged no more than the actual cost of the transaction to the financial agent.

Evaluators of the Maryland EBT Project found that cash assistance recipients averaged 1.7 transactions per \$100 in cash benefits. Given that the basic SSI grant for a single individual will be in excess of \$500 per month by January 1999, it would appear that providing only four free ATM transactions is, if anything, already on the low side.

⁵⁸ Findings from the *Mandatory EFT Demographic Study* were that 67% of respondents to the mail survey and 47% of respondents to the telephone survey felt that they did not have enough money to make having a bank account worthwhile while 24% and 40% respectively cited high fees and costs as their primary reason for not having an account.

Surcharging should be prohibited for all ETA transactions at either ATMs or POS devices, whether they are owned by the account provider or not. There is already precedent for such a position as several states expressly prohibit surcharging for EBT transactions or have otherwise worked out arrangements with the business sector to waive surcharges for such transactions.

***Question:** Should the account structure provide for additional electronic or nonelectronic deposits within the basic monthly service charge? If so, what number of deposits?*

Response: Yes, an unlimited number of other deposits to the account should be permitted at no additional cost to the recipient as such deposits are to the financial institution's own benefit as the financial institution will benefit from the float on these non-interest bearing ETAs. If, however, it is clear that additional costs are actually incurred as a result of the additional deposits, then rather than adding costs to the baseline ETA, appropriate fees for the additional deposits may be allowed.

***Question:** Should the account provide for some number of third-party payments, such as payments for rent or utility bills? If so, how many third party payments should be provided for and should they be priced in the basic monthly service charge?*

Response: Yes, third party payments should be permitted at recipient option, with fees permitted only to cover the actual, incremental costs incurred for providing this service. This is especially important if the basic account structure limits the number of "free" withdrawals. Otherwise it would take many recipients multiple withdrawals just to get enough cash at the beginning of the month to pay their basic bills for housing and utilities. Moreover, the third parties involved will generally pay the costs of any processing fees involved in such electronic transactions, just as they do now for the general banking public, since it is in their own best interest to receive recurring payments in this manner. Typically, utility companies and other service providers pay for electronic bill payment services in lieu of maintaining walk-in business offices to receive cash payments.

***Question:** Should the account include a savings feature? How would such a feature operate? Would additional free withdrawals or the capability to accept deposits other than the Federal payment act to foster savings by the recipient?*

Response: Yes, the ETA should include a savings feature. It certainly would not cost the financial agent to allow the recipient to carryover funds month to month.⁵⁹ The ETA menu could provide for a similar option to encourage savings and provide no-cost bill payment

⁵⁹ For example, Union Bank of California offers a "Cash & Save" account that provides six free money orders to customers who maintain a "Nest Egg Club Savings Account" opened with only a \$10 deposit.

methods. Other features that should be considered to encourage savings would be to provide for additional free ATM transactions or lower monthly service fees to those recipients who maintain a certain monthly balance in the account. Allowing additional free withdrawals and the capability to accept deposits other than the Federal payment would certainly foster Treasury's goal of encouraging savings.

***Question:** How important is a broad geographic reach to meeting the access objectives that most recipients will want? How should Treasury best meet access needs in underserved areas?*

Response: Treasury should not designate any financial institution as the financial agent for providing ETA services in any geographic area where such institution has not provided evidence that it can guarantee reasonable free access to all those recipients living within that designated area, including those recipients who may have special needs. Moreover, Treasury should consider investing some of the Federal savings resulting from EFT 99 in assuring the placement of convenient ATMs in underserved areas. Treasury will also need to assure that recipients are fully informed of their waiver options, especially those related to geographical hardship, so that if access needs cannot be reasonably met in some underserved areas, recipients will know of their ability to continue to receive their benefits via check.

***Question:** Should access to the account be provided at outlets in addition to those normally offered by the financial institution providing the account? For example, should arrangements be permitted under which third parties may offer other means by which a recipient may, in effect, withdraw funds from the account. If yes, should there be any restrictions on where additional access may be provided or under what terms it can be offered?*

Response: Yes, additional access points for cash withdrawals should be made available, so long as the recipient truly has reasonable access to multiple sources for accessing the funds, including free access through the financial institution's ATM and POS structure. We do not see a need for imposing any restrictions on where additional access may be provided at this time as our goal is to maximize the ease with which recipients can access their benefits by providing as extensive a range of access points as possible. However, we do feel strongly that any third parties who offer such services for a fee must clearly post information about those fees and must also allow for the recipient to cancel the transaction midstream without the imposition of any fee should the recipient decide he/she does not want to incur the listed fee that must appear on the ATM or POS screen. The informational materials provided to the recipient by the financial agent should also specify that there may be some access points that will impose fees and identify the types of locations where benefits can be accessed without incurring any additional fees.

Question: *If additional access is offered through arrangements with third parties, should the cost of this additional access be included in the pricing proposal in the competitive bid process?*

Response: If the additional access points provided by the third parties are part of the method by which the financial agent will provide the necessary access to the recipients within their geographic area, then all costs incurred necessary to obtain the federal money must be included in the competitive bid process. If the additional access is indeed *extra*, and not part of the required outreach of the financial agent, then the fees should be required to be reasonable.

Question: *Which account design would provide the appropriate opportunity for non-financial institutions to participate in the delivery of services to Federal payment recipients?*

Response: We do not support delivery of services exclusively through non-financial institutions, although we do support maximizing recipient access to their benefits by permitting a broad range of businesses to offer ATM and POS access for debit purchases, bill payment, and cash withdrawal. Recipients must truly be afforded meaningful and reasonable access to their funds at a financial institution but they should also have the option of accessing their benefits at grocery stores and other retail outlets and electronic bill payment options at utility companies, housing authorities, or retail outlets. This is especially true, if this is a free service to recipients. Even when there is a fee involved, so long as the fee is reasonable, non-financial institutions may have a place in the delivery structure of federal payments, because they may provide safer and more secure options and provide less expensive money orders. *However, for non-financial institutions to have a role, that role must be regulated to ensure that the fees charged are reasonable, and to prohibit set-offs against federal payments received through them.*

In addition, we strongly encourage aggressive efforts on the part of Treasury to encourage the U.S. Postal Service to offer electronic access to federal benefits through its network of local post offices. Such access would go a long way toward addressing issues of both safety and convenience without raising the specter of high pressure marketing of other costly services, especially since the Postal Service already offers low cost money orders and some branches also afford other options for some bill payments. The *Mandatory EFT Demographic Study* found that of all locations other than banks for accessing funds electronically recipients overwhelming preferred being able to use their local post office over any other option.⁶⁰

⁶⁰Of mail survey respondents 70% of all respondents and 62% of unbanked respondents stated a preference for accessing their benefits at the Post Office.

D. Additional Basic ETA Requirements

Basic consumer protections for federal ETAs are absolutely essential. In addition to the criteria specified above in response to the questions posed by Treasury in the NPRM, we feel that there are several additional minimum attributes that must be met by any ETA product:

- **Need for enhanced consumer protections.** Given the fact that the majority of the recipients of federal benefits who will be subject to the ETA default option will be low income, we contend that an enhanced set of consumer protections that go beyond those generally required under Regulation E must be guaranteed. This would include the prohibition against attachment and set-off discussed elsewhere in this comment, as well as both an extension of the more favorable credit card liability limits to ETA debit card recipients, and a prohibition on the assessment of either over-the-limit fees with debit card use or bounced deposit fees if other checks deposited into the account are returned for insufficient funds.

To provide ETA services, the financial agent must provide assurances that an enhanced package of consumer protections beyond those specified by Regulation E will be guaranteed.

- **Reasonable access to information about the balance left in the account.** Providing monthly statements--as otherwise required to consumers under the EFTA--is a relatively expensive service which might reasonably be waived for ETA recipients (Although if the ETAs are established pursuant to the new authority granted Treasury by virtue of P.L. 104-134, Congress' explicit requirement for "the same consumer protections with respect to the account as other account holders at the same financial institution" mandates that the monthly statements be provided.⁶¹) However, without monthly statements there is a necessity that recipients be entitled to find out, on a reasonable basis, *without cost* the remaining balance in their accounts, as well as the reason, the timing, and the amount of any fees imposed. While 12 C.F.R. § 205.15 requires account balance information and written history upon request when the requirement for the monthly statement is waived, a charge is not prohibited.

⁶¹31 U.S.C. § 3332(i)(2)(B), 1996. *Also see* discussion in section IIIB regarding the policy arguments requiring full Reg E protections to apply to the ETAs.

Also, every ATM transaction should include a receipt which indicates the imposition of fees, to the extent applicable, and the remaining balance in the account. POS transactions should also provide for receipts with comparable information, except that in the case of POS we support a recipient option to suppress the balance information from appearing on the receipt whenever there are safety or privacy concerns. To the extent that further information is necessary, or recipients wish to find out any of this information at other times, they should be able to call a toll free number, provide appropriate identifying information and obtain their account information at no cost. This would include an unlimited number of free balance verification inquiries to the financial institution's automated phone line. Whether or not this telephone service is available, recipients should be able to obtain a transaction history upon request at minimal or no cost.

At a minimum, all receipts from ATM transactions should include information about the remaining balance and fees; at least two monthly ATM balance inquiries should be allowed for free, and others should be charged no more than the actual cost to the bank for providing the information; and a transaction history should be available free upon request or whenever there is a dispute

- **The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area.** There are currently a number of ATM networks--Cirrus, Honor, etc.--most of which are reasonably accessible at merchants in the geographical area in which the banks offering them are located. However, some networks are more popular in some areas than others, and are thus less accessible in the "foreign" areas. It is important that there be both access to cash benefits through ATMs without fees, and reasonable POS access. This means that there must be a sufficient number of stores which both accept the type of ATM network device provided in the geographic vicinity in which the federal payee lives and permit the use of the card for cash back and withdrawals as well as purchases.

The ATM card or device must be accepted by a reasonable number of merchants in the neighborhood and surrounding area who permit both freecash back with purchase transactions and free or reasonably priced cash withdrawal options.

- **ATMs and POS devices must be accessible to handicapped people.** Many recipients of direct federal benefit payments are eligible for such payments on the basis of a physical or mental handicap. Their handicap may cause them to be unable to participate in an electronic banking environment unless the

equipment is specially modified to accommodate any handicapping condition they have, such as braille PIN pads, wheelchair accessible ATMs, etc. For those handicapped recipients who neither want a waiver or a representative payee, provisions should be made to insure that they can participate.

Unless Treasury is prepared to monitor compliance, merely requiring system compliance with the Americans with Disabilities Act is not sufficient. Leaving it up to the aggrieved individual to somehow find a way to manage while independently pursuing an ADA claim is an unreasonable expectation for government benefit recipients who are both poor and disabled.

To provide ETA services, the financial agent must demonstrate an ability to meet the special needs of handicapped recipients of government payments.

- **Recipients with limited reading skills or no English literacy at all also have special needs.** ATM and POS on-screen messages must meet the needs of those with limited English proficiency or who are non-English speaking as must the written materials provided to recipients.

To provide ETA services, the financial agent must demonstrate an ability to meet the special needs of those who are non-English speaking or have limited English proficiency.

- **Training for new electronic transfer recipients.** Many of the 10 million unbanked recipients of federal payments may have never had a relationship with a financial institution or used a credit or debit card prior to implementation of EFT 99. In recognition of this, there should be an opportunity for anyone who desires some personal training on how to use an ATM for a balance inquiry or withdrawal to receive some minimal level of assistance from the financial institution. This should be in addition to any written training material that may be provided.

In addition to providing written materials, financial institutions offering federally established ETAs should be required to provide in-person training upon recipient request.

- **Opportunity for recipients of federal ETA to choose their own PINs (personal identification numbers) and to obtain their debit card by means other than regular mail delivery as necessary.** Mandatory electronic delivery systems should use PIN self-selection as the norm to reduce the likelihood of the individual's needing to write the number down in order to remember it.

Where PIN assignment is used individuals must be allowed to change their PIN to a self-selected number.

Also, the mailing of cards and PINs to recipients raises all the issues of theft, loss, and delay within the mail system that already exist in the paper based benefit delivery system. ETAs must be able to accommodate alternative card issuance mechanisms for any recipients who express a concern about routine mail issuance.

Federally established ETAs must provide for a simple and quick means for recipients with an assigned PIN to change to a number of their own choosing and for alternatives to the mail issuance of the debit device when requested by the recipient.

- **Reasonable procedures for PIN replacement and card replacement.** It is critical that any electronic system for delivering federal payments have established procedures for promptly responding to recipient requests for a replacement of either the ATM card or the PIN. The need to get a replacement card or PIN could arise for any number of reasons, including the loss of the card, damage to the card or the magnetic strip on the card, failure to remember the assigned PIN, or recipient concern that the card and/or PIN has been compromised. Use of the card and PIN may well be the only way that federal payees can access the benefits they need to pay their bills and provide for the bare necessities.

Financial agents must demonstrate that they will provide simple procedures for requesting and promptly obtaining a replacement card and/or PIN and assure that a clear explanation of the steps an individual must take to initiate this process will be included in the informational materials that will be provided about the account.

IV. Protections Against Attachment and Set-off Must Apply to All Accounts Established to Comply with EFT 99.

Protections from Attachment by Third Parties Must Be Clarified. Most federal benefit programs afford recipients certain basic due process protections before their federal benefits can be attached by a third party. The statutes creating benefit programs, e.g.

Veteran's benefits,⁶² and Social Security benefits,⁶³ exempt those benefits from attachment by creditors when those benefits are deposited into a bank account as long as the funds are available on demand or for the support of the beneficiary and not converted into a permanent investment.⁶⁴ The provision on Social Security is typical of these protections:

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.⁶⁵

There are similar provisions in the governing statutes for SSI benefits⁶⁶ and Veteran's benefits.⁶⁷ Also, there are provisions in each of these statutes regarding the government's collection of overpayments, in cases in which too much money has mistakenly been paid to the federal recipient.⁶⁸

The law is clear regarding attachment and protection from the execution from claims of judgment creditors -- the underlying statutes prohibit it⁶⁹. However, while the law is clear,

⁶² See Porter v. Aetna Casualty & Surety Co., 370 U.S. 159 (1962).

⁶³ See Philpott v. Essex Cty. Welfare Board, 409 U.S. 413 (1973). See also S&S Diversified Services L.L.C. v. Taylor, 897 F. Supp. 549 (D. Wyo. 1995) (Social Security benefits remained exempt, even after being commingled with other funds, so long as "readily traceable." Court warned of possible sanctions against creditors who attempt to garnish social security benefits).

⁶⁴ Porter v. Aetna Casualty & Surety Co., 370 U.S. 159 (1962). See also Jones v. Goodson, 772 S.W.2d 609 (Ark. 1989) (certificates of deposit purchased with Veterans' benefits remained exempt; funds were "immediately accessible" even though depositor would forfeit some interest in case of early withdrawal); Younger v. Mitchell, 777 P.2d 789 (Kan. 1989) (veterans' benefits deposited into an interest bearing savings account exempt); United Home Foods Dist., Inc. v. Villegas, 724 P.2d 265 (Okla. App. 1986) (veterans benefits direct deposited into a bank account and used to pay household expenses "clearly" exempt).

⁶⁵ 42 U.S.C. § 407(a).

⁶⁶ 42 U.S.C. § 1383.

⁶⁷ 38 U.S.C. § 5301. See Porter v. Aetna Casualty & Surety Co., 370 U.S. 159 (1962).

⁶⁸ 42 U.S.C. § 1383 applies to overpayments of SSI benefits, and is an example of these provisions.

⁶⁹ See Philpott v. Essex Cty. Welfare Board, 409 U.S. 413 (1973). See also S&S Diversified Services L.L.C. v. Taylor, 897 F. Supp. 549 (D. Wyo. 1995) (Social Security benefits remained exempt, even after being commingled with other funds, so long as "readily traceable." Court warned of possible sanctions against creditors who attempt to garnish social security benefits).